



General Assembly Security Council

Distr.
GENERAL

A/37/793
S/15620
23 February 1983

ORIGINAL: ENGLISH

GENERAL ASSEMBLY
Thirty-seventh session
Agenda item 37
QUESTION OF CYPRUS

SECURITY COUNCIL
Thirty-seventh year

Letter dated 22 February 1983 from the Permanent Representative of
Turkey to the United Nations addressed to the Secretary-General

I have the honour to enclose herewith a letter dated 22 February 1983 addressed to you by Mr. Nail Atalay, the representative of the Turkish Federated State of Kibris.

I should be grateful if this letter were circulated as a document of the thirty-seventh session of the General Assembly, under agenda item 37, and of the Security Council.

(Signed) A. Coşkun KIRCA
Ambassador
Permanent Representative

ANNEX

Letter dated 22 February 1983 from Mr. Nail Atalay
to the Secretary-General

Upon instructions from my Government, I have the honour to draw your kind attention to the letter dated 29 December 1982 (A/37/791-S/15544) from the Greek Cypriot representative, which included allegations and protests against the decision of the Turkish Federated State of Kibris to issue "definitive possession certificates" to its citizens eligible under the rehabilitation, ownership and property of equal value law.

The aim of the law permitting the issue of "definitive possession certificates" to eligible citizens is to find a solution to the social and economic problems and difficulties of the Turkish Cypriot population, some of whom became refugees three times during the period of 1963 to 1974 as a result of Greek Cypriot attacks, threats and barbarism. In other words, the law is a result of a long search for a solution to the humanitarian problems of our citizens, 50 per cent of whom became refugees as a consequence of the decades-old Greek Cypriot onslaught on them. The following example of the people who are to benefit from the certificates in question may be helpful in evaluating the situation.

On 20 June 1977, the London Times reported the following:

"Of the 45 widows who live in Voni, a former Greek village now called Taskent that snuggles on the hot mountainside north-east of Nicosia, few really believe that their husbands - and in some cases, their brothers or sons as well - could still be alive. On August 14, 1974, their menfolk, 73 of them in all, were taken from the southern Cypriot village of Tokhni by soldiers of the Greek Cypriot National Guard and imprisoned in a local school. Next day - while the Turkish army was storming across northern Cyprus - the men were loaded into two buses under Greek military escort and driven away. Their wives have not seen them since.

"There are no memorials to those missing Turkish Cypriots, although the village of Voni is in itself a kind of sad monument to them. The survivors of Tokhni were transplanted at their own wish to Voni in 1975, and almost every house contains a widow or an orphan or a mother without sons."

The above given case is only one of the examples of Greek barbarism inflicted upon the Turkish community that, for 11 years, from 1963 to 1974, was a virtual hostage in Greek hands, denied every human right, including that of life, work and communication. Road blocks prevented them from escaping and coming to the north but, in spite of this, these people in their thousands trekked their way to the north over the mountains, facing death and arrest, humiliation and assault in order to reach freedom and security that were denied to them for 11 years. Thus, 65,000 Turkish Cypriots eventually moved north. This number is almost half of the Turkish Cypriot population in Cyprus.

/...

Half of the Turkish Cypriot population chose to leave their ancestral homes and land, but no one enquired what were the conditions that forced these people to leave their ancestral homes several times over the decades. They all moved north in the end under the Exchange of Population Agreement of 1975 that was implemented by the United Nations Peace-keeping Force in Cyprus. The alternative for them was subjection to Greek Cypriot barbarity of being dumped in common graves like the population of Aloa, Maratha, Sandallari, Tokhni, etc. These villagers and 65,000 refugees like them have to be rehabilitated within the boundaries of the Turkish Federated State of Kibris.

The tentative certificates given to them after the Exchange of Population Agreement of 1975 between the leaders of the two communities have now been converted into "definitive possession certificates" in order to finalize the process of rehabilitation, in line with the inter-communal summit agreement of 1979. This action will in no way jeopardize the rights of any person entitled to equal property in the south or to compensation in full, which will be one of the subjects to be discussed at the inter-communal talks. It should also be stressed that the decision of the Turkish Federated State of Kibris is without prejudice to the final political solution of the Cyprus question through the inter-communal talks.

The main aim of the Greek Cypriot protest and propaganda on this issue is the desire to prevent the establishment of a bi-zonal federal Republic of Cyprus. This can be clearly observed from the fact that, while they are issuing ownership certificates to their own citizens for houses built on Turkish Cypriot property in the south and are compulsorily acquiring Turkish-owned property in the south without paying compensation to the Turkish Cypriot owners, some Greek Cypriot politicians, under the guise of the "Society of Greek Cypriot Refugees", are protesting the Turkish Cypriot side's action.

It is essential to accept the reality that, due to Greek Cypriot attempts since 1963 to destroy the bi-communal partnership foundation of the Republic of Cyprus, the island is currently divided into two ethnically homogeneous administrations and Greek Cypriot administration in the south has no right whatsoever to interfere in the internal affairs of the Turkish Federated State of Kibris established in the north on the basis of a legal referendum of the Turkish Cypriot people. A statement by the Attorney-General of the Turkish Federated State of Kibris, Mr. Zaim Necatigil, elaborating the legal position is attached for easy reference.

I should be grateful if this letter were circulated as a document of the thirty-seventh session of the General Assembly, under agenda item 37, and of the Security Council.

(Signed) Nail ATALAY
Representative of the
Turkish Federated State of Kibris

/...

APPENDIX

Statement made by Mr. Zaim Necatigil

IT IS REPORTED IN THE GREEK CYPRIOT DAILY AGON OF 17 JANUARY 1983 THAT THE GREEK CYPRIOT ATTORNEY-GENERAL, MR. CRITON TORNARITIS HAS GIVEN HIS OPINION ON THE SUBJECT OF THE ISSUE OF 'CERTIFICATES OF TITLE' IN THE NORTH, OF GREEK CYPRIOT PROPERTIES TO TURKISH CYPRIOTS.

ACCORDING TO THE SAME REPORT, MR. TORNARITIS HAS EXPRESSED THE VIEW THAT INTERNATIONAL LAW HAS FORBIDDEN THE REQUISITIONING OF PROPERTY AND THAT THE ACTION OF THE TURKISH CYPRIOTS IN THIS RESPECT CONTRAVENES THE RELEVANT PRINCIPLES OF INTERNATIONAL LAW. MR. TORNARITIS HAS ARGUED THAT INTERNATIONAL LAW REQUIRES THAT RIGHTS TO MOVABLE AND IMMOVABLE PROPERTY IN 'OCCUPIED' TERRITORY MUST BE RESPECTED AND THAT 'FORCES OF OCCUPATION' MAY ONLY USE PROPERTY SEIZED DURING THE COURSE OF THE 'WAR'. HE CITED ARTICLE 55 OF THE HAGUE REGULATIONS WHICH PROVIDES THAT A BELLIGERENT OCCUPYING ENEMY TERRITORY SHALL ONLY BE REGARDED AS ADMINISTRATOR AND USUFRUCTUARY OF PUBLIC BUILDINGS, REAL PROPERTY, FORESTS AND AGRICULTURAL WORKS BELONGING TO THE HOSTILE STATE AND SITUATED ON THE OCCUPIED TERRITORY, AND THAT HE MUST PROTECT THE STOCK AND PLANT, AND ADMINISTER THEM ACCORDING TO THE RULES OF USUFRUCT.

MR. TORNARITIS ALSO CITED ARTICLES 46 AND 47 OF THE SAME REGULATIONS TO SUPPORT HIS CONTENTION THAT PRIVATE PROPERTY MUST BE RESPECTED AND NOT CONFISCATED AND ARTICLE 53 TO THE EFFECT THAT ONLY SUCH MOVABLE PROPERTY MAY BE APPROPRIATED AS CAN BE USED FOR THE OPERATIONS OF WAR. HE WENT ON TO CITE ALSO THE FIRST PROTOCOL TO THE EUROPEAN CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS.

THE ABOVE VIEWS ARE BASED ON CERTAIN ERRONEOUS ASSUMPTIONS AS TO THE FACTS AND THAT THE PRINCIPLES OF INTERNATIONAL LAW CITED BY MR. TORNARITIS ARE IRRELEVANT AND INAPPLICABLE TO THE SITUATION.

IT SHOULD BE NOTED AT THE OUTSET THAT THE HAGUE REGULATIONS WHICH INCORPORATE THE HAGUE CONVENTION 4 OF 1907 PROVIDE FOR THE LAWS AND CUSTOMS OF WAR ON LAND. IT LAYS DOWN CERTAIN PRINCIPLES RESPECTING OCCUPATION OF ENEMY TERRITORY BY A BELLIGERENT.

TURKEY INTERVENED IN CYPRUS IN 1974 BY VIRTUE OF HER RIGHT AND OBLIGATION UNDER ARTICLE 4 OF THE TREATY OF GUARANTEE. ARTICLE 181 OF THE 1960 CONSTITUTION OF CYPRUS PROVIDES THAT THE TREATY GUARANTEEING THE INDEPENDENCE, TERRITORIAL INTEGRITY AND CONSTITUTION OF THE REPUBLIC 'SHALL HAVE CONSTITUTIONAL FORCE'. TURKEY HAD THE RIGHT AND THE OBLIGATION TO INTERVENE WHEN THE STEADY AND CONTINUOUS BREACH BY THE GREEK SIDE OF THE TREATY OF GUARANTEE, STARTING AT THE END OF 1963 AND CULMINATING IN THE COUP D'ETAT OF 15 JULY 1974 AND SUBSEQUENT EVENTS UPSET THE STATE OF AFFAIRS CREATED BY THE FUNDAMENTAL PROVISIONS OF THE CONSTITUTION.

/...

TURKISH INTERVENTION IN CYPRUS COULD NOT BE REGARDED AS AN ACT OF 'WAR'. SIMILARLY TURKEY HAS NOT 'OCCUPYING' CYPRUS, NOR WAS THERE AN 'OCCUPATION FORCE' TAKING OVER OR SEIZING PRIVATE PROPERTY.

MOREOVER, THE HAGUE RULES REGULATE THE CONDUCT OF WAR ON LAND. IT IS SUBMITTED THAT THEY HAVE NO RELEVANCE IN RESPECT OF ADMINISTRATIVE ACTS OF THE AUTHORITIES OF A STATE IN PEACE TIME REGULATING RIGHTS TO PRIVATE PROPERTY. IT MUST BE REMEMBERED THAT MR. TORNARITIS CITED THE HAGUE RULES AS A BASIS FOR HIS ARGUMENT THAT THE ISSUE OF 'DEFINITE TITLE DEEDS' OF GREEK CYPRIOT OWNED IMMOVABLE PROPERTIES, TO TURKISH CYPRIOTS WAS CONTRARY TO INTERNATIONAL LAW. IT IS IMPORTANT THAT IN THIS RESPECT TWO POINTS SHOULD BE MADE CLEAR. FIRST, UNDER THE LAW IN FORCE IN THE TURKISH FEDERATED STATE OF KIBRIS, IT IS NOT THE 'TITLE' OF GREEK CYPRIOT PROPERTIES THAT IS ENVISAGED TO BE TRANSFERRED, BUT ONLY A POSSESSORY RIGHT. SECOND, THE RESPONSIBILITY OF TURKEY OR OF THE TURKISH ARMY, IS NOT INVOLVED OR ENGAGED AS REGARDS THE ISSUE OF THE ABOVE-REFERRED CERTIFICATES; TURKEY CANNOT BE HELD RESPONSIBLE FOR THE LAWS AND ADMINISTRATIVE ACTIONS OF THE TURKISH FEDERATED STATE OF KIBRIS. IT IS NOT POSSIBLE THEREFORE TO RELATE THESE ACTS OF STATE OF TURKISH FEDERATED STATE OF KIBRIS TO THE TURKISH INTERVENTION OF 1974 AND INVOKE THE PROVISIONS OF THE HAGUE RULES.

MR. TORNARITIS HAS BEEN IGNORING COMPLETELY THE EVOLUTIONARY CONSTITUTIONAL DEVELOPMENTS IN CYPRUS AS A RESULT OF WHICH THE 1960 CONSTITUTION WAS IMPLANTED BY TWO AUTONOMOUS ADMINISTRATIONS, ONE OF THE GREEK CYPRIOTS IN THE SOUTH AND THE OTHER OF THE TURKISH CYPRIOTS IN THE NORTH. THIS HAS BEEN RECOGNISED BY SECTION 5 OF THE GENEVA DECLARATION OF 30 JULY 1974 ISSUED JOINTLY ON BEHALF OF THE GOVERNMENTS OF GREECE, TURKEY AND THE UNITED KINGDOM. THE TURKISH CYPRIOTS HAVE A LAWFUL SHARE IN THE SOVEREIGNTY OF THE REPUBLIC OF CYPRUS. THE PARTNERSHIP RIGHTS AND STATUS OF THE TURKISH CYPRIOT PEOPLE HAVE BEEN ASSAILED AND DENIED FOR THE SAKE OF A 'NATIONAL CAUSE', I.E. UNION OF CYPRUS WITH GREECE. THE TURKISH CYPRIOTS HAVE, SINCE 1963 ADMINISTERED THEMSELVES IN LINE WITH THEIR PARTNERSHIP RIGHTS UNDER THE 1960 CONSTITUTION. HAVING BEEN EJECTED BY FORCE OF ARMS FROM THE 'GOVERNMENT OF THE REPUBLIC OF CYPRUS' BY THE GREEK CYPRIOT SIDE, THE TURKISH CYPRIOTS SET UP THE PROVISIONAL CYPRUS TURKISH ADMINISTRATION IN 1967, THIS ADMINISTRATION LATER DROPPED THE WORD 'PROVISIONAL' FROM ITS TITLE AND BECAME THE AUTONOMOUS CYPRUS TURKISH ADMINISTRATION. SINCE 1975, THIS ADMINISTRATION HAS BEEN PUT ON A CONSTITUTIONAL BASIS AND ADOPTED THE STYLE AND TITLE OF THE TURKISH FEDERATED STATE OF KIBRIS, STILL KEEPING THE RE-ESTABLISHMENT OF THE INTERCOMMUNAL PARTNERSHIP OPEN TO DISCUSSION.

BY A STYLE OF ARGUMENT MR. TORNARITIS IGNORES THESE DEVELOPMENTS IN THE NORTH OF CYPRUS AS WELL AS THE ACTS OF STATE OF THE TURKISH FEDERATED STATE AND TRIES TO IMPUTE RESPONSIBILITY TO TURKEY UNDER INTERNATIONAL LAW. THIS ARGUMENT IS UNTENABLE.

/...

THE TURKISH FEDERATED STATE OF KIBRIS HAS PASSED LAWS RELATING TO THE ADMINISTRATION, CONTROL, ALLOCATION AND GENERAL CARE OF IMMOVABLE PROPERTY BELONGING TO GREEK CYPRIOTS WHICH HAVE BEEN WITHIN THE BOUNDARIES OF THE STATE. ONE OF SUCH LAWS IS LAW NO. 41/1977 (AS AMENDED) ENTITLED "HOUSING, ALLOCATION OF LAND AND PROPERTY OF EQUAL VALUE LAW." THE AIM OF THE LAW IS TO REHABILITATE TURKISH CYPRIOTS WHO HAVE MOVED FROM THE SOUTH TO THE NORTH AND TO MAKE PROVISION AS REGARDS THE CONSTITUTIONAL RIGHT OF ITS CITIZENS TO ASK FOR IMMOVABLE PROPERTY OR COMPENSATION FROM THE STATE, AT THE EQUAL VALUE OF THEIR OWN IMMOVABLE PROPERTIES LEFT IN THE SOUTH OUTSIDE THE STATE BOUNDARIES IN CYPRUS. UNDER THIS LAW, APPLICANTS ENTITLED TO PROPERTY OF EQUAL VALUE CAN BE ISSUED WITH "DEFINITE POSSESSORY CERTIFICATES". THE LAWS OF THIS STATE DO NOT PROVIDE FOR CONFISCATION OF PROPERTIES OF GREEK CYPRIOTS.

IT IS TRUE THAT ARTICLE I OF THE FIRST PROTOCOL TO THE EUROPEAN CONVENTION ON HUMAN RIGHTS STIPULATES THAT "EVERY NATURAL OR LEGAL PERSON IS ENTITLED TO THE PEACEFUL ENJOYMENT OF HIS POSSESSIONS". THE SAME ARTICLE GOES ON TO STATE THAT "NO ONE SHALL BE DEPRIVED OF HIS POSSESSIONS EXCEPT IN THE PUBLIC INTEREST AND SUBJECT TO THE CONDITIONS PROVIDED FOR BY LAW AND BY THE GENERAL PRINCIPLES OF INTERNATIONAL LAW". IT IS SUBMITTED THAT BY USE OF THE WORD "DEPRIVED", IT WAS INTENDED THAT THE SAID ARTICLE SHOULD COVER THOSE IN ACTUAL ENJOYMENT OF POSSESSIONS. HOW CAN ONE BE "DEPRIVED" OF POSSESSION OF PROPERTY WHICH ONE HAS LEFT BEHIND? THE LAWS OF THIS STATE IN FACT MAKE PROVISIONS TO REGULATE THE POSSESSION AND CONTROL OF PROPERTY ALREADY ABANDONED. MOREOVER, THE RIGHT PROTECTED BY THE SAID ARTICLE IS NOT ABSOLUTE; IT HAS GOT ITS EXCEPTIONS.

ABOVE ALL, THE GREEK CYPRIOT ADMINISTRATION ITSELF HAS UTILISED ITS POWERS UNDER THE LAWS RELATING TO REQUISITION AND COMPULSORY ACQUISITION OF PROPERTY, SET UP A CENTRAL COMMITTEE AND REGIONAL COMMITTEES FOR THE APPLICATION OF THE ABOVE LAWS AND SINCE 1975 REQUISITIONED ALL TURKISH CYPRIOT PROPERTIES IN THE SOUTH. MOREOVER, NUMEROUS TURKISH CYPRIOTS HAVE BEEN DEPRIVED OF THEIR RIGHTS TO PROPERTY SINCE 1963.

BEFORE ARRIVING AT A SOUND LEGAL CONCLUSION REGARDING THE ISSUES ARISING OUT OF THE CYPRUS SITUATION IT IS ESSENTIAL TO KNOW THE TRUE FACTS; AFTER ALL, THE LAW IS APPLIED TO A GIVEN FACTUAL SITUATION; IF THE FACTS ARE WRONG THE LEGAL CONCLUSION BASED ON SUCH FACTS WILL ALSO BE UNTENABLE. MOREOVER, AN OBJECTIVE ASSESSMENT MUST ALWAYS RULE OUT THE APPLICATION OF DOUBLE STANDARDS.
